

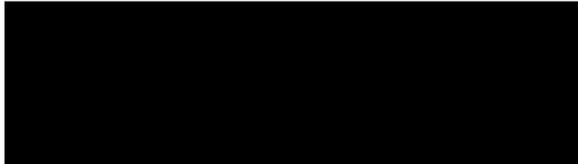
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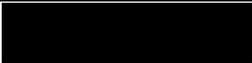
U.S. Citizenship
and Immigration
Services

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LI

FILE:



Office: NEW YORK

Date:

NOV 28 2007

MSC-05-172-11607

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wienmann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on March 21, 2005. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant requested that the record, including the appeal, be forwarded to the Director responsible for the Paper[work] Reduction Act. The applicant also stated that Citizenship and Immigration Services (CIS) had violated the Paper[work] Reduction Act; violated the Administrative Procedures Act by violating Federal statutes and its own regulations; acted arbitrarily and capriciously, exceeded its own authority, and failed to provide the applicant with a clear explanation of the standards used to deny him; and provided meaningless notice, which amounted to a violation of the Due Process Clause of the 5th Amendment to the United States Constitution. The applicant also explained the evolution of the legalization program, the benefits provided to the United States by individuals who have entered without inspection, the difficulty of obtaining evidence after the passage of time, and the weighing of the injustice resulting from denying the application versus the harm resulting from granting the application. The applicant also attached copies of evidence he had already submitted.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to CIS on March 21, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his only address during the requisite period to be at [REDACTED] Queens, New York from July 1980 to January 1991. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: handyman at [REDACTED] Queens, New York from August 1980 to September 1990; and maintenance at Dayton Towers, [REDACTED] Queens, New York from January 1982 to January 1987.

The applicant also provided multiple declarations in support of his application. In his declaration, [REDACTED] stated that he met the applicant in 1982 and worked with him on and off for several years doing maintenance jobs mainly at Dayton Towers in New York. The declarant worked with the applicant until 1987 and became friends with him. This letter fails to specifically confirm the applicant resided continuously in the United States during the requisite period. In addition, the declarant failed to provide the applicant's address during the requisite period. Therefore, it is found to lack sufficient detail.

In her declaration, [REDACTED] stated that she met the applicant in the mid-1980s at church and that he "used to go every Sunday." The declarant failed to state specifically when he saw the applicant at church, and at which church. This declaration fails to confirm the applicant resided in the United States during the requisite period.

In his first declaration dated February 26, 2005, [REDACTED] stated that he met the applicant for the first time in July 1980. He met the applicant at Flushing Meadow Park, where the declarant went to play soccer with some mutual friends. The declarant shared an apartment with the applicant at [REDACTED] in Queens from 1980 to 1991, until the applicant found a new apartment. He failed to submit a copy of their lease or rent receipts.

The declaration from [REDACTED] states that the declarant met the applicant in November 1980 through her sister. She met the applicant again at many family events. This letter does not confirm the applicant resided in the United States during the requisite period. She failed to indicate how frequently she saw the applicant.

The first declaration from [REDACTED] states that the declarant met the applicant on Christmas in 1980 at her nephew's apartment. This declaration fails to confirm the applicant resided in the United States during the requisite period. She also failed to state how frequently she saw the applicant.

The declaration from [REDACTED] states that the declarant has known the applicant since 1980 when someone recommended the applicant to help the declarant with painting his apartment and fixing things. The declarant failed to state how he dated his initial contact with the applicant.

In response to a Notice of Intent to Deny (NOID) issued on March 6, 2006, the applicant submitted affidavits from [REDACTED] and [REDACTED]. In his affidavit dated April 7, 2006, [REDACTED] stated that he met the applicant in 1981, "an unforgettable day." The affiant provided details regarding the first time he met the applicant at Flushing Meadows Park. This information is inconsistent with the declaration provided by [REDACTED] dated February 26, 2005, where he indicated he met the applicant in July 1980. This inconsistency calls into question whether [REDACTED] can actually confirm the applicant resided in the United States during the requisite period.

In the affidavit from [REDACTED] dated April 3, 2006, the affiant stated that she met the applicant at her nephew's apartment in Jackson Heights, New York on Christmas in 1980. This affidavit fails to specifically confirm the applicant resided in the United States during the requisite period.

In denying the application, the director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant requested that the record, including the appeal, be forwarded to the Director responsible for the Paper[work] Reduction Act. The applicant also stated that CIS had violated the Paper[work] Reduction Act. This argument is without merit as the burden for this collection of information has been uniformly applied to the applicant and to other applicants for temporary residents. As indicated in the instructions for Form I-687, the proper procedure for providing comments regarding the collection of information on Form I-687 is to send comments to the CIS Regulatory Management Division at [REDACTED]

On appeal, the applicant also stated that CIS violated the Administrative Procedures Act by violating Federal statutes and its own regulations; acted arbitrarily and capriciously, exceeded its own authority, and failed to provide the applicant with a clear explanation of the standards used to deny him; and provided meaningless notice, which amounted to a violation of the Due Process Clause of the 5th Amendment to the United States Constitution. These arguments are also without merit. Specifically, the applicant was provided with a valid reason for denial of his application. The denial related to the applicant's failure to meet the burden of proof by a preponderance of the evidence that he resided in the United States throughout the requisite period. This conclusion is not arbitrary, particularly considering the limited evidence presented by the applicant. Although the applicant argues that his right to procedural due process was violated, he has not shown that any violation of the regulations resulted in "substantial prejudice" to him. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an applicant "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. The applicant's primary complaint is that the director denied the petition. As previously discussed, the applicant has not met his burden of proof and the denial was the proper result under the regulation. Accordingly, the applicant's claim is without merit.

The applicant also explained the evolution of the legalization program, the benefits provided to the United States by individuals who have entered without inspection, the difficulty of obtaining evidence after the passage of time, and the weighing of the injustice resulting from denying the application versus the harm resulting from granting the application. As noted above, the applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The evaluation of the injustice to the applicant from denying the application versus the harm resulting from granting the application is not relevant to the determination of whether an applicant is eligible for temporary resident status. Therefore, the director did not err in neglecting to make this evaluation. Lastly, the applicant also attached copies of evidence he had already submitted.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits and declarations that lack sufficient detail, fail to confirm the applicant resided in the United States throughout the requisite period, or conflict with each other. Specifically, the declaration from German [REDACTED] lacks sufficient detail. The declarations from [REDACTED] and [REDACTED] and the declaration and affidavit from [REDACTED] fail to confirm the applicant resided in the United States throughout the requisite period. The declaration and affidavit from [REDACTED] conflict with each other. The declaration from [REDACTED] indicates the applicant painted apartments in the declarant's apartment building from 1980 until 1990. Considering the limitations of the other evidence presented by the applicant, [REDACTED] declaration is found not to be sufficient to demonstrate by a preponderance of the evidence that the applicant resided in the United States throughout the requisite period.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictory statements contained in the applicant's supporting declarations and affidavits, and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.